

1 and this, this eventually ties into that, and, and, so, I will
2 overrule the objection. Proceed, Ms. Woolf.

3 MS. WOOLF: Page 8, lines -- I guess it start line 9
4 --

5 JUDGE MILLER: Okay. You know, one thing that you'd
6 better be clear about, Mr. Waysdorf, where they say "acceded
7 to the demands of its customers..." I mean, I'm, I'm, I'm
8 still in a position where I don't have the faintest idea who
9 he's talking about or how many of them. You know that, don't
10 you?

11 MR. WAYSDORF: Yes, I do, Your Honor.

12 JUDGE MILLER: In other words, although I've allowed
13 this to come in as his con-- as his conclusion based on other
14 facts in this record, I'm not thereby saying that, that I know
15 what, what he did and who he did it to and how many of them he
16 did it for. There is -- because there's later an argument in
17 this case that one of Pac Bell's suggested remedies he found
18 was not as ex-- was, was more expensive than one he later
19 promulgated. Proceed, Ms. Woolf.

20 MS. WOOLF: Page 8.

21 JUDGE MILLER: Page 8.

22 MS. WOOLF: Again, again, it's in the middle of the
23 page, about line 9. This is "because far from..." and then it
24 continues on down to line 16. Again talking about Complaints,
25 it's hearsay. We have no reliable way to test this. We're

1 not given names. We, we, we don't, we don't know if it's
2 reliable or, you know, we have no way to test it because of
3 the way that it's written.

4 MR. WAYSDORF: Well, Your Honor, we have -- we are
5 producing testimony by four customers who in fact complained
6 and in fact terminated their service. In addition --

7 JUDGE MILLER: Well, do you want to --

8 MR. WAYSDORF: -- relevance --

9 JUDGE MILLER: Are you willing to re-- while you --
10 are you willing to -- you have many -- you'll have to talk to
11 your witness about it, but are you willing to substitute for
12 the word "my customers" the word "four customers"?

13 MR. WAYSDORF: No, Your Hon-- Your Honor, I'm not,
14 because -- we're not, because, in addition, this is relevant
15 to Mr. Bader's and TMC's perception of the service quality and
16 the actions that they took next in relation to it.

17 JUDGE MILLER: Objection sustained, Ms. Woolf.

18 MS. WOOLF: That's down to line 16.

19 JUDGE MILLER: Right.

20 MS. WOOLF: Okay.

21 JUDGE MILLER: We'll go -- after the word "all" --

22 MS. WOOLF: Yes.

23 JUDGE MILLER: -- on 16.

24 MR. WAYSDORF: Your Honor?

25 JUDGE MILLER: Yes?

1 MR. WAYSDORF: Just for clarification, do we -- we
2 would like to make an offer of proof that this is in fact the
3 case, notwithstanding your ruling. Some -- well, you -- judge
4 -- is in my --

5 JUDGE MILLER: No. I, I have no problems with you
6 -- with, with -- at this juncture with you saying that you
7 want to make an offer of proof. Now, I restrict offers of
8 proof, and I think properly so, to facts.

9 MR. WAYSDORF: Well --

10 JUDGE MILLER: Right?

11 MR. WAYSDORF: In that case, I mean, our offer of
12 proof at least would consist of the four witnesses who are --
13 who in fact did complain.

14 JUDGE MILLER: All right.

15 MR. WAYSDORF: Did --

16 JUDGE MILLER: And who are those four witnesses, so
17 that, so that your offer of proof will be specific and you can
18 -- you'll have a little something to carry forward?

19 MR. WAYSDORF: I misstated. It's three. Mr.
20 Bachman, Mark S. Bachman, Marvin Druskoff, and Barry Yeager.

21 JUDGE MILLER: And you -- if you were permitted to
22 make an offer of proof, that you would, you would show that
23 the three customers began to complain about the basic quality
24 of the access service that they were receiving. Right?

25 MR. WAYSDORF: We would make an offer of proof that

1 at least three customers.

2 JUDGE MILLER: All right. Bachman, Druskoff, and
3 who was it?

4 MR. WAYSORF: Yeager, Y E A G E R.

5 JUDGE MILLER: All right. You -- your offer of
6 proof is now on the record. It is, of course, rejected, but
7 you, you have it available and you have it in a factual con-
8 text, Mr. Waysdorf. Proceed.

9 MS. WOOLF: Page 9. I, I understand that -- the
10 ruling you gave earlier, Your Honor, but I still believe that
11 lines relating to, you know, 8, 9, and 10 talking about what
12 happened in 1986 is irrelevant to this Complaint.

13 JUDGE MILLER: Yeah. Your -- I understand your
14 position and my ruling is still the same, that, that based on
15 the passage that I read to you the last -- at the last ses-
16 sion, Ms. Woolf, that, that this is relevant. This is a
17 relevant time period. 1985 to 1988 is a relevant time period.
18 It may not be so for damages, but it is relevant as far as the
19 evidence is concerned.

20 MS. WOOLF: All right.

21 JUDGE MILLER: All right. And -- but your position,
22 your position is noted on that. And, and I'll, I'll -- I
23 would even go so far as to say you have a standing position
24 on, on events that occurred prior to February 27, 1987, so
25 that the record will show that that's, that's your position.

1 MS. WOOLF: Okay. So, I won't --

2 JUDGE MILLER: So, you won't need to bring it up
3 every time. That's what I'm saying.

4 MS. WOOLF: That, that will save us a little bit of
5 time.

6 JUDGE MILLER: Proceed.

7 MS. WOOLF: Page 12, line 3, "excessive number of
8 customer complaints..."

9 JUDGE MILLER: Wait, wait. Just a minute. Before
10 you move on, I wanted to -- Mr. Waysdorf, I'll tell you what I
11 have -- what -- how I am interpreting some testimony here so
12 that you'll be aware of it. He says, "I studied these reports
13 every day during the time periods in issue in this Complaint."
14 Now, he is telling me that he studied these reports every day
15 in 1985 to 1988, despite what Ms. Woolf might say, and I
16 intend to ask him some questions along those lines. You
17 follow me?

18 MR. WAYSDORF: Um-hum.

19 JUDGE MILLER: Proceed, Ms. Woolf.

20 MS. WOOLF: Page 12, line 3. There's an inappropriate
21 characterization in terms of the word of "excessive number
22 of complaints." There's nothing to support that.

23 MR. WAYSDORF: Your Honor, this case is, is --
24 clearly the point of, of this is his perception of, of why he
25 then took further action. If -- it, it strictly is to -- I

1 don't see any problem with that if -- he is the president of
2 the company. He has received what he perceives to be an
3 excessive number of com-- of complaints prompting him to take
4 further remedial action.

5 JUDGE MILLER: How, how many is -- how, how many is
6 it?

7 MR. WAYSORF: I can't testify --

8 JUDGE MILLER: Do we have --

9 MR. WAYSORF: -- for --

10 JUDGE MILLER: Do we have something. do we have
11 something in here, Mr. Waysdorf --

12 MR. WAYSORF: We have -- yes. We have --

13 JUDGE MILLER: -- that tells us what, what he --

14 MR. WAYSORF: Yes, Your Honor.

15 JUDGE MILLER: I -- in other words, I can count and
16 say, you know, so that I can make a decision that 14 is
17 excessive --

18 MR. WAYSORF: Yes. Your Honor --

19 JUDGE MILLER: -- or 14 is not excessive or --

20 MR. WAYSORF: Exhibit --

21 JUDGE MILLER: -- depending on the way the testimony
22 reads. Now, this is --

23 MR. WAYSORF: Exhibit --

24 JUDGE MILLER: -- what I need.

25 MR. WAYSORF: -- Exhibit -- Your Honor, Exhibit 10

1 is 64 pages -- excuse me, 65 pages, TMC's own trouble logs.
2 Each page contains a good 15 or 20 complaints reported.

3 JUDGE MILLER: That's just sponsored by --

4 MR. WAYSDORF: By --

5 JUDGE MILLER: -- Carrabis?

6 MR. WAYSDORF: Carrabis. Correct, Your Honor.

7 JUDGE MILLER: Right?

8 MR. WAYSDORF: Yes. For the -- for this time per-
9 iod, relating to the quality of service, and not every single
10 one is the specific -- the, the majority of our -- of them are
11 the specific --

12 JUDGE MILLER: I will, I will interpret the word
13 excessive in, in, in light of Exhibit 10, assuming we get
14 Exhibit 10 in evidence. But, but I just certainly will be
15 willing to look at excessive in that light, Ms. Woolf, and to
16 that extent your objection is overruled.

17 MS. WOOLF: Okay. We, we will be objecting to
18 Exhibit 10 also, just so that it's noted at this point in the
19 record.

20 JUDGE MILLER: All right. Let me say that, that,
21 that, that we have a word in that sentence that I have indi-
22 cated to you that, since you weren't able to arrive at a
23 stipulation on post-- postdial delay, excessive postdial
24 delay, it will be up to you to get your views in the record
25 here somehow. You follow me?

1 MS. WOOLF: Yes.

2 JUDGE MILLER: Okay. Proceed.

3 MS. WOOLF: Page -- the, the remainder of that
4 paragraph on page 12 contains quite a bit of hearsay in terms
5 of what people told him, what other people at TMC told him,
6 and then what those people told him their customers told them.
7 So, you've got double hearsay in there in terms of what, what
8 was being told about customer complaints. So, I would like to
9 object on the basis of double hearsay for those --

10 JUDGE MILLER: All right. Totem pole hearsay. Mr.
11 Waysdorf?

12 MR. WAYSDORF: Your Honor, this is -- it's not being
13 offered for -- to prove the existence of these complaints.
14 This is to prove Mr. Bader's perception as to why he then took
15 further action and why he was alarmed about the, the nature
16 and magnitude of these complaints.

17 JUDGE MILLER: The objection is sustained.

18 MR. WAYSDORF: And that is from -- the -- from
19 where?

20 JUDGE MILLER: That is for --

21 MR. WAYSDORF: From line 6?

22 JUDGE MILLER: From line 6 to the end of the
23 paragraph.

24 MR. WAYSDORF: Is that what it was --

25 MS. WOOLF: Yes, that was my objection. Okay.

1 MR. WAYSDORF: Your, Your Honor, that, that was
2 through line 20? I, I just don't see, from line 17 down, why
3 we --

4 JUDGE MILLER: Oh, well --

5 MR. WAYSDORF: -- with what he --

6 JUDGE MILLER: -- 17 --

7 MR. WAYSDORF: -- perhaps you --

8 JUDGE MILLER: -- 17, 17 is -- summarily depends on
9 the previous sentences, Mr. Waysdorf.

10 MR. WAYSDORF: Well, it would seem that the -- we're
11 -- you know, that --

12 JUDGE MILLER: Next, Ms. Woolf.

13 MS. WOOLF: Line 21 on that same page, page 12.
14 Speculation in terms of what the customers' perceptions were.

15 JUDGE MILLER: Mr. Waysdorf?

16 MR. WAYSDORF: Again, Your Honor, this really goes
17 to Mr. Bader's perception of what problems he needed to then
18 take action about.

19 JUDGE MILLER: Well, he, he, he doesn't say that it
20 was his perception. He says the customers were perceiving.
21 He wasn't -- does he -- he wasn't saying that he was. He may
22 eventually say that, but he, he's saying his customers per-
23 ceived it.

24 MR. WAYSDORF: Could I ask for a clarification as to
25 whether Ms. Woolf is objecting to the sentence or to the first

1 -- up to the comma?

2 MS. WOOLF: The, the first part of that sentence I
3 think is clearly objectionable, as well as a little bit later
4 in the sentence, again talking about what TMC's customers were
5 reporting. Hearsay. I mean -- so, I think the entire sen-
6 tence is objectionable.

7 MR. WAYSDORF: Well, I think that the -- after the
8 comma is a completely different, different standing. Because
9 certainly we've es-- we, we are going to establish that TMC's
10 customers were reporting problems. That's a different -- that
11 is in Exhibit 10. There were certainly problems being report-
12 ed. Whether -- and that's in a different standard than, than
13 him testifying as to whether the customers were --

14 JUDGE MILLER: The, the --

15 MR. WAYSDORF: -- perceiving deficiencies.

16 JUDGE MILLER: The objection is sustained.

17 MR. WAYSDORF: For the entire sentence?

18 JUDGE MILLER: For the entire sentence. I, I'll
19 back off on that, Mr. Waysdorf. Let me say this. I won't --
20 I'll put the period after the, the "traffic problems TMC's
21 customers were reporting". I'll put a period there. And I
22 will allow, even though I'm not very happy with the word
23 "next," I will allow the next sentence. "TMC next..." up to
24 "...enlists the aid of PB in correcting the problems." I
25 think that is a -- I think that's a fair statement in light of

1 a lot of the other evidence that has, has been -- that -- or
2 will be adduced in this proceeding. Ms. Woolf, do you under-
3 stand what I did?

4 MS. WOOLF: Yes.

5 JUDGE MILLER: Proceed.

6 MS. WOOLF: Page 13, line 10. What he was ref--
7 ref-- I have ref-- "I have repeatedly been instructed by PB to
8 contact my account team..." That's hearsay.

9 MR. WAYSORF: Your, Your Honor, I believe that this
10 is the type of material that is appropriate for an administra-
11 tive hearing. It shows the business procedures that he has
12 been given instructions on by the company.

13 JUDGE MILLER: My problem, my problem is that I
14 don't -- I, I have -- I looked. Now, it may be that I, I
15 don't know where to look, Mr. Waysdorf, but I've, I've looked
16 for memos -- written memos, letters, even details of telephone
17 calls where PB so instructed Mr. Bader and I haven't been able
18 to find any, in your exhibits. I, I could be, I could be --
19 again, as I say, there's 72 exhibits here. I could be, I
20 could be wrong.

21 MR. WAYSORF: Your Honor, it seems like he would be
22 able to testify as to his own experience in dealing with
23 Pacific Bell. Again, I, I think that would be an evaluation
24 of, of the weight. But for an administrative hearing, it
25 seems to me that this is, this is material that should be,

1 that should be allowed in.

2 MS. WOOLF: Your Honor, I mean, there has to be a
3 difference between what his experience is and saying what
4 people told him. You know, what is a fact and one isn't.

5 JUDGE MILLER: Your objection is sustained. Let me
6 say this. We are dealing here now with a -- with an exhibit
7 with a -- with, with a, with a, a witness who either, correct-
8 ly or incorrectly, is painting a picture of what occurred
9 between 1985 and 1988. Now, if he's going to paint that
10 picture, I have to have some hard cold facts to underlie his
11 picture. I'm not saying that once he gives me those facts
12 that I'm necessarily going to agree that that's what it was,
13 Mr. Waysdorf, but --

14 MR. WAYSDORF: Your, Your Honor, this is his sworn
15 testimony and this is -- these are those facts.

16 JUDGE MILLER: Yeah. But his sworn testimony is no
17 good to me in writing an ID. That's what I'm telling you.
18 It, it -- I cannot write, in, in fairness to, to any of the
19 Parties, including yourself, that he was in -- repeatedly
20 instructed by PB. I can't, I can't do it unless I have
21 something that shows what it was, telephone calls, memos,
22 letters. What -- the word "repeatedly" has a multiple conno-
23 tation in here.

24 MR. WAYSDORF: Well, Your Honor, then we could
25 strike the word "repeatedly," but I, I believe that, that he

1 can testify -- I mean, that, that would suggest that if they
2 tell him this orally they're absolved from, from any responsi-
3 bility for it. It -- the -- this is, this is what he experi-
4 enced and what he --

5 JUDGE MILLER: Well --

6 MR. WAYSDORF: -- was told and what he based his
7 further actions on.

8 JUDGE MILLER: Hear-- hearsay. "I have been in-
9 structed by PB to contact my account team with any questions
10 or concerns." In other words, he is saying that somebody --
11 I, I think he's saying that somebody above the account team
12 level instructed him to go to the account team. Now --

13 MR. WAYSDORF: It may have been the account team.
14 It doesn't necessarily say that it's a -- above the account
15 team. But this -- these are the people that he, he had dealt
16 with from the start.

17 JUDGE MILLER: Well, why wouldn't he write I've been
18 repeatedly -- "I have repeatedly been instructed by the PB
19 account team to come to them with any questions..."? Why are
20 we dealing here with PB on the one hand and the account team
21 on the other as two separate entities?

22 But the objection is sustained. Proceed, Ms. Woolf.

23 MR. WAYSDORF: Your Honor, I -- we would like to
24 offer this as -- make an offer of proof on this.

25 JUDGE MILLER: All right. What, what's your offer,

1 offer of proof?

2 MR. WAYS DORF: That, that this, this, in the course
3 of business, he was instructed by Pacific Bell representatives
4 to contact --

5 JUDGE MILLER: Who? Who? Tell me who.

6 MR. WAYS DORF: I can't tell you who, Your Honor. I
7 can't testify for him. That's why we're bringing Mr. Bader
8 in. I can't testify for him. But he was --

9 JUDGE MILLER: All right.

10 MR. WAYS DORF: -- instructed by Pacific Bell repre-
11 sentatives that he should address any questions or concerns
12 regarding the planning -- implementation of TMC's access ser-
13 vices to his account team.

14 JUDGE MILLER: All right. Your, your offer of proof
15 is noted. It's of course rejected. Proceed.

16 MS. WOOLF: Page 14. Page -- excuse me, line 4
17 through 8. Speculation as to what happened after it went to
18 his -- what the account team did, and it's also argumentative.

19 JUDGE MILLER: I'll overrule that objection. I, I
20 will interpret that sentence in the, in the light of what --
21 some other exhibits yet to follow. I think that's a reason-
22 able conclusion that he could draw from the, and we'll get to
23 the -- to this portion, from the -- Howard Stolz and Thomas
24 David. I think this is a, a conclusion, a permissible conclu-
25 sion under the, under the -- given that background. Now, you

1 may have objections to David and -- but we'll take them when
2 we get them.

3 MS. WOOLF: Okay. And continuing on that page, line
4 18 through 21. I object as to him testifying as to what the
5 account teams -- you know, characterizi-- characterizing their
6 reaction.

7 JUDGE MILLER: Mr. --

8 MR. WAYSDORF: The -- Your Honor, he's identified
9 the specific people involved. This is -- he is allowed as a,
10 as a lay witness to characterize a, a person's reaction that
11 he observes. And, and in that respect, I don't believe that
12 this is -- there's any problem with this. Your Honor, is --
13 my understanding is I'm addressing from the middle of 18 to
14 the middle of 19. Is that cor-- that was your objection,
15 wasn't it?

16 JUDGE MILLER: I, I have "My account team's initial
17 reaction to my complaints was one of skepticism, and to my
18 knowledge no immediate steps were taken to investigate TMC's
19 network access facilities."

20 MR. WAYSDORF: Okay. But they -- the, the second
21 half of that from the be-- from the end is again based on --
22 he's -- there he's stating his -- what is true to his knowl-
23 edge. He -- this is reflected in the later testimony and will
24 be reflected in the testimony of other witnesses as well.

25 JUDGE MILLER: I will, I will sustain your

1 objection, Ms. Woolf, up to the word an-- "skepticism and" on
2 line 19, and capitalize the "to": "To my knowledge no imme-
3 diate steps..." But I will strike the words: "My account
4 team's initial reaction to my complaints was one of -- skepti-
5 cism and". And let me say that I, I have underlined the words
6 "Ken Korba" and "Tom Broadhead," and I note that they are not
7 going to be testifying in this proceeding. And as there is no
8 way for me to, to effectively analyze the word "skepticism"
9 under those conditions -- but I'll leave to -- I'll leave it
10 to his: "To my knowledge no immediate steps were taken to
11 investigate TMC's network access facilities." Proceed, Ms.
12 Woolf.

13 MS. WOOLF: Page 15, line 13. I just object to the
14 use of the, the words "vociferously" and "explicitly" as not
15 being factual in nature.

16 JUDGE MILLER: The words "vociferously" and "explic-
17 itly" are, are stricken. "TMC stated that its complaints
18 concerning its equal access service at that meeting." And I'm
19 -- I will, I will -- I'm going to, I'm going to on my own
20 motion strike the word "consistently," fifth line down,
21 "Although PB has informed me..." because I will make the
22 decision how consistently it was based on the factual evidence
23 of record.

24 MS. WOOLF: Next, page 16, lines 10 through 13. In
25 this sentence Mr. Bader is attempting to testify about Pacific

1 Bell -- how Pacific Bell ran this particular test, and I don't
2 know how he can -- has the requisite knowledge to say that no
3 effort was made, et cetera. That seems to be all speculation.

4 JUDGE MILLER: What, what, what exhibit are we
5 talking about that -- what, what test? The one that was in
6 the, the -- in the November 7, 1986, memo, Mr. Waysdorf?

7 MR. WAYSORF: I believe so, and that clearly said
8 it was only dealing with what was run through the access
9 tandem.

10 JUDGE MILLER: I'll overrule the objection, Ms. --
11 and I, and I'm going to -- but I'm looking at the words "no
12 efforts" and I'm going to interpret them in the light of what
13 is in or is not in that November 1986 memo.

14 MS. WOOLF: Okay. To the extent that that's the
15 interpretation, I don't have an objection. I don't want
16 him --

17 JUDGE MILLER: Well, I --

18 MS. WOOLF: -- to have any --

19 JUDGE MILLER: Well --

20 MS. WOOLF: -- independend-- he doesn't have any
21 independent --

22 JUDGE MILLER: You're --

23 MS. WOOLF: -- knowledge.

24 JUDGE MILLER: All, all I'm saying is you're a
25 winner as far as the November -- up to the November 7, 1986,

1 memo. After that you're a loser. Proceed.

2 And that -- and, and I think the record should
3 reflect that there's a sentence later on in that paragraph
4 which says a copy of this memo is being submitted as TMC
5 Exhibit 11, so that it's clear that what -- where I'm going to
6 be looking. Proceed, Ms. Woolf.

7 MS. WOOLF: I will object to the characterization on
8 line 25 of page 16 characterizing the test as "an extremely
9 limited test," because I don't believe he's qualified to give
10 that sort of opinion.

11 MR. WAYS DORF: You're objecting to just the word
12 "extremely" here?

13 JUDGE MILLER: "Extremely" -- it, it -- that is --

14 MR. WAYS DORF: I mean, it's extreme --

15 JUDGE MILLER: "An extremely limited" are the words.
16 A N, "extremely," and "limited." "That is" and, then, so you
17 put a word -- put the word "a": "That is a test that to my
18 knowledge was never followed up on by PB."

19 MR. WAYS DORF: But he explains his reasoning in the
20 entire defense as to why this was a limited test. If the
21 objection were just to extremely --

22 JUDGE MILLER: I will -- Mr. Waysdorf, I'll make
23 that decision.

24 MR. WAYS DORF: Your Honor, you're -- I --

25 JUDGE MILLER: When I get to an ID.

1 MR. WAYSDORF: Fine, Your Honor.

2 JUDGE MILLER: And that's -- if, if you have the
3 facts in the, in the surrounding paragraphs, name them to me.

4 MR. WAYSDORF: Okay, Your Honor.

5 JUDGE MILLER: Proceed, Ms. Woolf.

6 MS. WOOLF: Page 17, line 3. Two things I --
7 "severity" and "frequency." I don't think there's the founda-
8 tion for that, as well as the parenthetical statement that
9 continues on to line 4 is hearsay.

10 MR. WAYSDORF: Your Honor, there were -- if I may
11 respond, the, the "severity" and "frequency" are two items to
12 which Mr. Bader has certainly personal knowledge of what he's
13 testifying about. These are his own complaints. And I don't
14 believe that there's any reason why --

15 JUDGE MILLER: Can I, can I look at those tel-- you
16 mean, you want me to rely on those telephone notes?

17 MR. WAYSDORF: I think that --

18 JUDGE MILLER: And, and, and --

19 MR. WAYSDORF: -- that's one indication.

20 JUDGE MILLER: And any, any deposition by someone
21 else where he made a complaint?

22 MR. WAYSDORF: Your Honor, as well as the notes
23 taken by T-- Pac Bell's own people regarding the meetings that
24 they had in reporting on Mr. Bader's complaints. These were
25 repeated and quite often made.

1 JUDGE MILLER: Now, I -- and we also want -- and
2 we're also at this stage, when we talk about customer com-
3 plaints, we're talking about three people?

4 MR. WAYSDORF: At least.

5 JUDGE MILLER: At least three --

6 MR. WAYSDORF: We believe --

7 JUDGE MILLER: -- people.

8 MR. WAYSDORF: -- there are far --

9 JUDGE MILLER: Well --

10 MR. WAYSDORF: -- more than three. We have, we have
11 three --

12 JUDGE MILLER: I, I will ask you again, Mr.
13 Waysdorf, because I asked you once and you told me four, and
14 then you said well, three, and I'll -- I, I will now ask you
15 again what else are you relying on for those words --

16 MR. WAYSDORF: Your --

17 JUDGE MILLER: -- "my customers complaints"?

18 MR. WAYSDORF: Your Honor, as I said, Exhibit,
19 Exhibit -- TMC Exhibit 10 has 65 pages of customer complaints,
20 at least 15 to a page, for this time period relating to com--
21 customer complaints as to the quality and the delay and the
22 blocked calls and all the things that we would testify -- that
23 we -- that Mr. Bader is testifying about.

24 JUDGE MILLER: All right. Now --

25 MR. WAYSDORF: That's at least --

1 JUDGE MILLER: Now --

2 MR. WAYS DORF: -- at least 700 to 1,000 --

3 JUDGE MILLER: When do we talk, when do we talk
4 about "as more time passed"? What is he saying to me? Where
5 -- from where --

6 MR. WAYS DORF: Your Honor, this is --

7 JUDGE MILLER: -- to where are -- we --

8 MR. WAYS DORF: -- this is --

9 JUDGE MILLER: Are, are we talking about --

10 MR. WAYS DORF: This is from --

11 JUDGE MILLER: -- 1986 to 1987? I mean, where --

12 MR. WAYS DORF: We--

13 JUDGE MILLER: -- where, where -- what's the time
14 period --

15 MR. WAYS DORF: This, this --

16 JUDGE MILLER: -- we're talking about?

17 MR. WAYS DORF: This is a, a, a background scenario
18 starting from subsequent to the, to the November 1986 test
19 that was referred to in the preceding paragraph.

20 JUDGE MILLER: Okay.

21 MR. WAYS DORF: It's in -- which was a result, excuse
22 me, of an October 8-- '86 meeting and continuing it to, I
23 believe, 1987, as, as time went on in the next complaints that
24 he raised. He's still talking at this point about the, the
25 problems with the 1986 test and the continuation of his

1 | complaints into the next year.

2 | JUDGE MILLER: All right. I'll overrule the
3 | objection.

4 | MS. WOOLF: If we go on to the next sentence, begin-
5 | ning with "therefore" on line 7.

6 | JUDGE MILLER: Okay.

7 | MS. WOOLF: He's giving an opinion as to the valid-
8 | ity of this test and he has not been offered or does not
9 | qualify as an expert witness on postdial delay testing. I
10 | believe his opinion is irrelevant to the truth of the -- of
11 | what he's trying to say.

12 | MR. WAYSORF: Your Honor, this is submitted as a
13 | comparison to his own testing and experience, which is ex-
14 | plained elsewhere in the testimony, and also based on the
15 | explanation on the previous page as to why this October 1986
16 | testing reflected in the November '86 memo did not accurately
17 | reflect the situation, especially as it compared to AT&T's
18 | use, use of direct trunking as compared to TMC's relegation to
19 | the access tandem.

20 | JUDGE MILLER: The objection is sustained. I'm not
21 | saying that I wouldn't -- I don't know what's back here in Mr.
22 | Carrabis's testimony, but -- proceed, Ms. Woolf.

23 | MS. WOOLF: Okay. That same paragraph, the last
24 | sentence beginning "however," line 14. Speculation as to --
25 | he's testifying as to why Pacific Bell continued to represent

1 something to him, which is also hearsay.

2 MR. WAYSDORF: It's not why. He's testifying as to
3 what Pacific Bell's representatives told him, which was that
4 their traffic going through the access tandem is not subject
5 to call processing problems.

6 MS. WOOLF: Yes. That -- in the beginning of that
7 sentence he states, "based solely on the results of this test,
8 PB continued to represent..." In other words, he is, he is
9 testifying as to what Pacific Bell's purpose or --

10 JUDGE MILLER: I'll --

11 MR. WAYSDORF: No, he's testifying that --

12 JUDGE MILLER: -- strike the words "based solely on
13 the results of this one-time test." "However, PB continued to
14 represent to me during the entire period covered by this
15 Complaint..."

16 MR. WAYSDORF: Okay, Your Honor.

17 JUDGE MILLER: "...that TMC's traffic that went
18 through the access tandem was not subject to call processing
19 problems." Proceed, Ms. --

20 MS. WOOLF: I assume you don't want me to object to
21 the rep -- for example, page 18 he talks about Exhibit 10,
22 which we will be objecting to. I'll save my, I'll save my
23 objections to that exhibit for when we get there.

24 JUDGE MILLER: We've got -- I think it would be
25 wise.

1 MS. WOOLF: Okay.

2 JUDGE MILLER: I think you have to understand that,
3 you know, you have to go through these exhibit, exhibit by
4 exhibit. But this, to me, is in-- this, this sentence is
5 important, because when I get to Exhibit 10 I've got to know
6 who I'm, who I'm going to cross-examine or who I'm -- who's,
7 who's taking responsibility for the exhibit. And, so, to the
8 extent he makes that reference, I think it's important, be-
9 cause we may have problems with some, some other exhibits
10 later on as to who, who the sponsor is, and I instructed --
11 I've instructed Ms. Waysdorf to -- so, I guess it was her
12 husband she should tell -- that I want to know who the spon-
13 sors of some of these, some of these exhibits are. And, so,
14 that the, the -- we'll all have a clear idea of who is sup-
15 posed to cross-examine and, and, and how we can go about it.
16 Proceed.

17 MS. WOOLF: Okay. Page 19, line 16, talking about
18 Pacific Bell's consistent response to my complaints. I don't
19 think there's a foundation for that.

20 JUDGE MILLER: Wait a minute. What -- I'm sorry?

21 MS. WOOLF: I'm on page 19.

22 JUDGE MILLER: Yeah. Before you, before you get to
23 19, let me, let me -- I have a question mark, Mr. Waysdorf,
24 on, on page 18 starting with the line 16 through 20. "Al-
25 though I am unable to locate all of my records from this

1 period..." I don't under-- I don't have the faintest idea
2 what he's saying to me. And is he saying that -- but, but
3 he's evidently saying that he was able to locate all of his
4 telephone logs. Is that a fair interpretation of that
5 sentence?

6 MR. WAYSDORF: I, I believe that is a fair inter-
7 pretation. There were other records he believes he maintained
8 as well which he cannot find. But he --

9 JUDGE MILLER: All right.

10 MR. WAYSDORF: -- did have his tele-- telephone
11 logs.

12 JUDGE MILLER: All right. Now go to 19, Ms. Woolf.

13 MS. WOOLF: Line 16, "Pacific Bell's consistent
14 response to my complaints..." There's no foundation for that
15 characterization of -- about it being a "consistent
16 response..."

17 MR. WAYSDORF: Your Honor, the entire rest of the
18 paragraph explains the instance, the specific instances, and
19 in fact we go on, on a couple pages on the specific instances
20 that define what -- why this was the consistent response.

21 JUDGE MILLER: I'll overrule the objection. And let
22 me go one step further. He says that consistently they re-
23 fused to deny that there was any problems of -- if, if the
24 testi-- if you are offering some testimony in your version of
25 what occurred during this period instead -- well, he never --